IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. R. No. 92 of 2005.

Date of decision: 04.01.2006.

Ganga Ram ... Petitioner

Versus

Smt. Kaushalya Devi & Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Suneet Goel, Advocate.

For the respondents: Mr. R.K. Sharma, Advocate.

V.M. Jain, J. (Oral):

This revision petition has been filed by the petitioner – husband against the order dated 10.6.2005 passed by the learned Sessions Judge, whereby the revision petition filed by his wife and minor son was allowed, the order dated 30.9.2004 passed by the Chief Judicial Magistrate, was set aside and the wife and minor son were awarded a sum of Rs.1500/- and Rs.700/- per month respectively, as maintenance from the date of the filing of the petition under Section 125 Cr.P.C..

The facts which are relevant for the decision of the present petition are that Smt. Kaushalya Devi and Sahil Kumar, minor, had filed a petition under Section 125 Cr.P.C. against Ganga Ram, (present petitioner), for the grant of the maintenance, with the allegations that

[1]Whether reporters of Local Papers may be allowed to see the judgment?

Smt. Kaushalya Devi was the wife and Sahil Kumar, minor, was the son of Ganga Ram. It was alleged in the said petition that the marriage between Kaushalya Devi and Ganga Ram was solemnized about 14 years back and that Sahil Kumar, minor, was born out of this wed lock. It was alleged that after sometime, Ganga Ram started maltreating Kaushalya Devi. It was further alleged that Ganga Ram was earning more than Rs.8,000/- P.M. and was not providing anything to them for their maintenance and that they had no source of income. In reply, Ganga Ram, denied the allegations of maltreating. On the other hand, it was alleged that his wife and minor son both were living in his house. It was alleged that his wife was in the habit of abusing and maltreating him and his mother. It was further alleged that he was providing all necessities of life to his wife and his minor son.

After hearing both sides and perusing the record, the learned Chief Judicial Magistrate, dismissed the claim petition under Section 125 Cr.P.C., holding that the wife and minor son were not entitled to claim any maintenance from Ganga Ram, in the petition under Section 125 Cr.P.C.. Aggrieved against the order passed by the Chief Judicial Magistrate, Smt. Kaushalya Devi and Sahil Kumar, minor, filed revision petition. The learned Sessions Judge, after hearing both sides and perusing the record, accepted the revision petition, set aside the order of the Chief Judicial Magistrate and granted Rs.1500/- and Rs.700/- P.M. respectively, as maintenance to Smt. Kaushalya Devi and Sahil Kumar, minor, against Ganga Ram, from the date of the filing of the petition under Section 125 Cr.P.C. Aggrieved against the same, Ganga Ram, filed the present revision petition in this Court.

Notice pending admission was issued to the other side and the records were also requisitioned.

I have heard the learned counsel appearing for the parties and have gone through the record carefully.

The learned counsel appearing for Ganga Ram, petitioner, submitted before me that the present respondents, namely Smt. Kaushalya Devi and Sahil Kumar, minor, who are wife and the minor son of the present petitioner, were living with the present petitioner in the same house and that he was already maintaining them by providing them food etc. and as such no case for the grant of maintenance to the wife and minor son of the present petitioner was made out. On the other hand, the learned counsel appearing for the present respondents submitted before me that even though the present respondents are residing in the house of the present petitioner (though separately), yet the present petitioner was not providing them anything for their maintenance. He has further submitted that the learned Sessions Judge had rightly granted the maintenance to the present respondents.

As referred to above, it is the admitted case of the parties that the present respondents, who are wife and the minor son of the present petitioner, are residing in the house of the present petitioner, though separately. Thus, the present respondents do not have to spend anything for their residence. Keeping this fact in view, the next question that comes up for consideration is as to how much amount of maintenance, the present petitioner is required to give to the present respondents, in the present petition under Section 125 Cr.P.C. The

learned Sessions Judge had granted Rs.1500/- P.M. to the wife and Rs.700/- P.M. to the minor son of the present petitioner, as maintenance under Section 125 Cr.P.C.. There is nothing on the record to show that while assessing the amount of maintenance, the learned Sessions Judge had kept in view that the present petitioner had already provided a portion of his house as their residence to the present respondents. It has come on the record that the gross salary of the present petitioner is Rs.8,923/- and his carry home salary is Rs.6,343/-. Keeping in view the peculiar facts and circumstances of the present case and the fact that the present petitioner has already provided a part of his house to the present respondents for their residence, in my opinion, the ends of justice would be fully met, in case, the amount of maintenance is assessed at Rs.1000/- P.M. for the wife and Rs.500/- P.M. for the minor son.

In view of the above, the present petition is partly allowed, the order dated 10.6.2005 passed by the learned Sessions Judge, Hamirpur, is modified and the amount of maintenance awarded to the present respondents, who are the wife and minor son of the present petitioner, is reduced from Rs.1500/- P.M. to Rs.1000/- P.M. for wife, namely Smt. Kaushalya Devi and from Rs.700/- P.M. to Rs.500/- P.M., for the minor son, namely Sahil Kumar, total Rs.1500/- P.M. It is further directed that this order of maintenance shall be from the date of the filing of the petition under Section 125 Cr.P.C. i.e. 17.4.2002. It is further made clear that any amount paid by the present petitioner to the present respondents towards interim maintenance or otherwise during the pendency of the litigation towards maintenance, shall stand adjusted.

CMPs No. 383 and 492 of 2005:

In view of the orders passed in the main petition, the stay order dated 31.8.2005 passed in **CMP No. 383 of 2005**, shall stand vacated and both the applications stand disposed of.

(V.M. Jain),
Judge

January 04, 2006
(BSS)